

MEMORANDUM OF UNDERSTANDING BETWEEN STOCKTON-ON-TEES BOROUGH COUNCIL, HARTLEPOOL BOROUGH COUNCIL AND HIGHWAYS ENGLAND

In relation to

Modelling of development impacts at Wynyard

HIGHWAYS ENGLAND REF. –

STOCKTON ON TEES BOROUGH COUNCIL REF. –

HARTLEPOOL BOROUGH COUNCIL REF. –

OFFICIAL - SENSITIVE

1. Preamble

This document sets out the terms of a Memorandum between **Stockton-on-Tees Borough Council, Hartlepool Borough Council, and Highways England** regarding the modelling of development impacts on the A689 and the Wolviston junction of the A19 and A689.

The Memorandum of Understanding, whilst a non-contractual business arrangement, acknowledges the goodwill between the participants and relies upon a spirit of co-operation for its implementation to achieve mutual benefit by treating the terms as if legally binding.

Nothing within this Memorandum shall have the effect of requiring any of the Parties to act in a way that is contrary to its own rules, governance or standing orders.

2. Definitions

Service Provider – party carrying out the Project.

Party/Parties to the Memorandum (Party/the Parties) – as identified in Section 1.

Stockton-on-Tees Borough Council – its successors and assigns.

Hartlepool Borough Council – its successors and assigns.

Highways England – Highways England, its successors and assigns.

Third party/parties – A person or organisation which is not a Party on whose behalf the model may be operated.

The Project – the work to be carried out under this Memorandum of Understanding, as defined in the Scope of Work.

Notification in writing shall include notification by email to the organisational email address of the nominated sponsor for each party to the Memorandum.

3. Confidentiality

Each of the Parties to this Memorandum of Understanding hereby indicates its intention to keep the terms of the Memorandum of Understanding, and any related documentation confidential and will take all necessary action to ensure that all persons associated with the Memorandum of Understanding, whether employees, agents or consultants likewise keep confidential any information regarding the business of this Memorandum of Understanding or the business of any other Parties to this Memorandum of Understanding, unless the information -

3.1 is in the public domain at the time of disclosure;

3.2 is received by the receiving member from another person or organisation who is not restricted by virtue of responsibility of confidentiality;

3.3 is required to be disclosed as a result of a statutory requirement, judicial proceeding, tribunal or any other instance where the member is legally required to disclose the information.

4. Term of the Memorandum

4.1 The term of this Memorandum of Understanding will come into effect on the date of signing by the Parties and will terminate on 31 March 2020. The terms of this Memorandum of Understanding may be extended by mutual agreement in writing of the Parties to this Memorandum.

5. Assignment

5.1 No Party to this Memorandum of Understanding may assign their interest in this Memorandum in whole or in part to any other person or organisation without the prior written consent of the other Parties to this Memorandum.

6. Project Management

6.1 The Stockton-on-Tees Borough Council Sponsor for this Memorandum of Understanding will be:

**Peter Shovlin
Urban Landscape Manager**

Or any other officers as may be appointed by **Stockton-on-Tees Borough Council** and notified to the other Parties in writing.

6.2 The Hartlepool Borough Council Sponsor for this Memorandum of Understanding will be:

**Mike Blair
Technical Services Manager**

Or any other officers as may be appointed by **Hartlepool Borough Council** and notified to other Parties in writing.

6.2 The Highways England Sponsor for this Memorandum of Understanding will be:

**Daniel Gaunt
Asset Manager, NDD Yorkshire and North East
Highways England, 8 City Walk, Leeds LS11 9AT**

Or any other officer as may be appointed by **Highways England** and notified to other Parties in writing.

7. Scope of Work

7.1 Background

- 7.1.1 The parties to this Memorandum have identified a number of proposals for development of housing, commercial and leisure development around and affecting the junction of the A19 and A689, and on the A689 west of the junction.
- 7.1.2 In 2013 a microsimulation traffic model was prepared by the Highways Agency to test the impact of two planning applications, which also took into account committed developments and known network improvements and changes. Subsequently, developers have been given access to the model to test impacts of other potential developments. However, this has resulted in a loss of confidence of the Parties and decision makers in the quality and validity of outputs, and conflict with developers about the technical aspects of the modelling and the extent of potential impacts.
- 7.1.3 The Parties to this Memorandum agree to the need for single model providing consistent, high quality outputs which give confidence to all parties including third parties and decision makers. In order to achieve this, the Parties have agreed to jointly develop, maintain, and operate the model. It is the intention of all parties that this shall be carried out by a single consultant appointed to do so in accordance with parameters agreed between the parties and set out in this Memorandum.

7.2 Appointment of a Service Provider

- 7.2.1 A Service Provider shall be appointed by Stockton-on-Tees Borough Council to carry out technical work on behalf of the parties to this Memorandum.
- 7.2.2 Stockton-on-Tees Borough Council notify in writing the other parties of the details of the Service Provider it intends to appoint.
- 7.2.3 Stockton-on-Tees Borough Council will ensure that the intended Service Provider is suitably qualified to undertake the anticipated work. This shall include ensuring that the consultant is able to effectively minimise the occurrence of conflicts of interest.
- 7.2.4 It shall be a condition of appointment that the Service Provider shall charge third parties instructing it in line with paragraph 7.4.9 at rates not in excess of its normal commercial rates for work of the same nature.
- 7.2.5 If either of the other parties objects to the appointment of the intended Service Provider for any reason it shall notify Stockton-on-Tees Borough Council in writing of its objection. Upon receipt of any such objection, Stockton-on-Tees Borough Council shall suspend appointment of its intended consultant pending discussions with the other parties to resolve objections, save that Stockton-on-Tees Borough Council shall not be obliged to breach its contract procedures.
- 7.2.6 Once all objections have been resolved, Stockton-on-Tees Borough Council shall be permitted to appoint its intended Service Provider in line with its

normal procedures.

- 7.2.7 Once appointed, all parties to the agreement generally agree to accept the recommendations of the Service Provider in respect of any tests run using the model. However, any of the parties may at any time appoint its own consultant to review or verify the work undertaken.

7.3 Development of the Model

- 7.3.1 The model shall be developed using suitable microsimulation software agreed by the parties to this Memorandum.
- 7.3.2 The model shall be calibrated and validated in line with good practice for the development of traffic models. The calibration and validation reports shall be made available to other Parties on request.

7.4 Operation of the model

Operation for or on behalf of the Parties to the Memorandum

- 7.4.1 Any of the Parties to the Memorandum may instruct the Service Provider to run any tests using the model for its own purpose.
- 7.4.2 The Service Provider shall maintain a list of tests which is has been instructed to carry out, which shall be shared with any other party upon request.
- 7.4.3 The Service Provider shall ensure that all tests are carried out competently and in line with best practice and the advice of the developer of the modelling software.
- 7.4.4 The Service Provider shall refuse to run any test which in its professional judgement the model is unsuitable for.
- 7.4.5 For any test or combination of tests the Service Provider may be asked by the instructing Party or Parties to provide an independent recommendation. In such circumstances, the Service Provider shall ensure that the report and recommendation it provides is its independent professional view and that it is provided without regard to the political considerations of the instructing Party or Parties.

Operation for or on behalf third parties

- 7.4.6 Any of the parties to the Memorandum may instruct the Service Provider to issue a copy of the model to a third party for the purposes of scenario testing under general conditions which shall be agreed between the parties in writing in advance and which shall include:
- A time limit for which permission to use the issued copy of the model is granted;
 - A requirement that the model is used competently and in line with best practice and the advice of the developer of the modelling software;
 - A restriction on the use of modelling outputs carried out using the copy of the model, which shall be for internal testing purposes only; and

- A restriction on further sharing of the model beyond the third party and its suppliers.

7.4.7 In exceptional circumstances and with the written agreement of all the Parties, any or all of the general conditions may be waived or amended.

7.4.8 The Service Provider shall maintain a list of third parties to whom copies of the model have been provided, which shall be shared with any other Party upon request. This shall include details of the conditions applied in accordance with paragraph 7.4.6 and/or amended or waived in accordance with paragraph 7.4.7.

7.4.9 A third party may instruct the Service Provider to carry out any tests for its own requirements and at its own expense, which shall be subject to agreement between the Service Provider and the third party and which shall place no obligation on any of the Parties.

7.4.10 Except where a general condition has been waived in accordance with paragraph 7.4.7, only where tests have been carried out by the Service Provider shall permission be granted for test results and interpretation to be published externally to the third party.

7.4.11 For any tests carried out on behalf of a third party, paragraphs 7.4.2 to 7.4.5 shall apply as if the tests were carried out on behalf of one of the Parties.

7.5 Updating the model

7.5.1 The model shall normally be updated to operate in the most up-to-date version of the agreed microsimulation software. The model shall not be converted to operate in an alternative modelling package unless all parties have notified other parties of their consent in writing.

7.5.2 The model shall normally be updated to represent the most likely future development scenarios as the base scenario. The Service Provider shall keep a record of the assumptions and development sites which are taken into account in developing the base scenario, which shall be agreed between the Parties.

7.5.3 While it is intended that the model updates as described in 7.5.1 and 7.5.2 shall generally be carried out at the appropriate time, this Memorandum shall not oblige and single party to meet the cost of undertaking updates. Rather, it shall be a matter for agreement between the Parties at the appropriate time.

7.5.4 From time to time the Parties may decide that the data on which the model is based needs to be updated. Any such update is not within the scope of this Memorandum and shall be subject to separate agreement between the Parties.

8. Financial Details

8.1 The costs of developing the model, including instructing the Service Provider and ensuring the model is calibrated and validated in accordance with good practice

for transport modelling shall be subject to agreement between the parties before any work is undertaken.

- 8.2 Highways England shall be fully responsible for the costs of instructing its suppliers to review the development, calibration and validation of the model for its purposes.
- 8.3 The cost of running any tests shall be met by the instructing Party (or Parties where jointly instructed).
- 8.4 Prior to instructing a task, the instructing party shall be required to ensure it has a mechanism in place to pay the costs of the work. This may either be through a direct agreement with the Service Provider, or by agreement with Stockton-on-Tees Borough Council as the appointer of the Service Provider.
- 8.5 The timing of payments (if applicable) shall be agreed between the instructing Party and the Service Provider.

9. Publicity

- 9.1 No Party to this Memorandum of Understanding shall publish information regarding this Memorandum of Understanding or their membership of it, without the prior written agreement of the other Parties.
- 9.2 The text of any such agreed publication and details of the proposed medium or transmission service must be approved in advance by the Parties.

10. Variations to the Memorandum of Understanding

- 10.1 Any proposal to vary or amend this Memorandum of Understanding must be approved in writing by all Parties to the Memorandum of Understanding.

11. Termination

- 11.1 Any Party may immediately, without prejudice to any other rights and remedies under the Memorandum of Understanding, terminate all, or any part of the Memorandum of Understanding by giving one months' Notice in writing to the other Parties if:

- The Service Provider fails in the opinion of the Parties to provide the service it has been appointed to provide, subject to the Service Provider having been given written notice of the failure complained about and having not rectified that failure within 21 days of receiving that notice.
- The Service Provider becomes bankrupt or insolvent, or has a receiving order made against him, or makes an arrangement with his creditors, or (being a corporation) commences to be wound up, not being a voluntary winding up for the purpose of reconstruction or amalgamation, or has a receiver, administrator, or administrative

receiver appointed by a Court.

- Irreconcilable difficulties arise between the Parties over the terms of the Memorandum of Understanding.
- It becomes apparent that the technical, organisational or financial project aims are unlikely to be met within a reasonable timescale.
- A Party decides that it is no longer appropriate to continue to participate in the Memorandum for any other reason.

11.2 In the event that a Party terminates this Memorandum as set out above, that Party shall continue to comply with the obligations for confidentiality set out in section 3 of this Memorandum.

12. Intellectual Property Rights

12.1 All pre-existing Intellectual Property Rights or Intellectual Property Rights developed independently of this MoU remains the property of the owning Party.

12.2 Any Intellectual Property Rights that arise or are developed in carrying out the requirements of this MoU are vested in and owned by the Party or Parties instructing the Service Provider to create or develop those rights.

12.3 Each Party grants the other an irrevocable, royalty free, non-exclusive licence of all jointly developed Intellectual Property Rights owned by it pursuant to clause 14.2 for its own use and exploitation.

13. Waiver

13.1 The failure or delay of any Party to exercise any right under this MOU may not be construed as a waiver of that right, and no waiver of the terms and conditions of this MOU shall be valid or binding on any Party unless otherwise set forth in writing and signed by the waiving Party.

14. Relationship of Parties to the Memorandum of Understanding


14.1 Nothing in this Memorandum of Understanding shall create a partnership or joint venture between the Parties to the Memorandum of Understanding.

15. Entire Memorandum of Understanding

15.1 This Memorandum of Understanding constitutes the entire Memorandum of Understanding between the Parties to the Memorandum of Understanding, and supersedes all oral or written agreements, representations, understandings or prior arrangements relating to its subject matter.

FORM OF MEMORANDUM OF UNDERSTANDING

We the undersigned agree to observe and abide by the terms and conditions of this Memorandum of Understanding

Signed:.....

Name: **Richard McGuckin**

For: **Stockton-on-Tees Borough Council**

Position: **Director of Economic Growth and Development**

Date: **12th October 2016**

Signed:.....

Name: **Denise Ogden**

For: **Hartlepool Borough Council**

Position: **Director of Regeneration and Neighbourhoods**

Date:.....**7th October 2016**.....

Signed:.....

Name: **Nicholas Whitford**

For: **Highways England**

Position: **Asset Delivery Manager**

Date:.....**22nd November 2016**.....

